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FISCAL IMPACT STATEMENT

LS 7052

BILL NUMBER: HB 1307

NOTE PREPARED: Jan 24, 2006

BILL AMENDED: Jan 23, 2006

SUBJECT: Worker's Compensation.

FIRST AUTHOR: Rep. Torr

FIRST SPONSOR:

BILL STATUS: 2nd Reading - 1st House

FUNDS AFFECTED: X GENERAL
X DEDICATED
X FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill requires the Worker's Compensation Board (Board) to amend its schedule of attorney's fees for worker's compensation and occupational disease claims filed after September 1, 2006.

The bill provides that the burden of proof of the element of a claim is on the employee, and that proof by the employee does not create a presumption in favor of the employee with regard to another element of the claim.

The bill provides for increases in the: (1) average weekly wage used to calculate worker's compensation and occupational disease benefits; (2) schedule for awarding compensation for the degree of permanent partial impairment determined by the Board; and (3) maximum compensation that may be paid for personal injury by accident or disablement or occupational disease.

The bill deletes an exception to and revises the statute of limitations for the making of a modified award of worker's compensation and occupational disease benefits. It also provides that a member of the Worker's Compensation Board may not have other employment inconsistent with the discharge of the member's duties.

The bill requires an employer to notify an employee of the time limitation for filing for worker's compensation for personal injury by accident.

The bill revises the computation for the assessment for the Second Injury Fund, and transfers the funds from the Residual Asbestos Injury Fund to the Second Injury Fund. It repeals language related to the Second Injury Fund.

The bill establishes the Interim Study Committee on Worker's Compensation Reimbursement Issues.

It makes technical corrections.

Effective Date: Upon passage; July 1, 2006.

Explanation of State Expenditures: *Attorney Fees:* The bill requires the Worker's Compensation Board to amend its schedule of attorney's fees. Attorney fees, according to the bill, are to be set at the following:

1. A minimum of \$200.
2. 20% of the first \$50,000 of recovery.
3. 15% of the recovery over \$50,000.
4. 10% of the value of:
 - a. Unpaid medical expenses;
 - b. Out-of-pocket medical expenses; or
 - c. Future medical expenses.

However, the Board maintains continuing jurisdiction over all attorney's fees in claims before the Board and may order a different schedule for a claim. The impact for the Board would be the cost of adopting new rules. The cost could be covered within the existing level of staff and resources.

(Revised) *Burden of Proof:* The bill states that the burden of proof of the element of a claim is on the employee. The provision could reduce the claims paid by employers if the employee cannot prove the injury was work-related.

Permanent Partial Impairment: The bill increases the award for disability based on the degree of impairment.

For Each Degree of Impairment from	Current	FY 2008	FY 2009	FY 2010	FY 2011
1-10	\$1,300	\$1,340	\$1,365	\$1,380	\$1,400
11-35	\$1,500	\$1,545	\$1,570	\$1,585	\$1,600
36-50	\$2,400	\$2,475	\$2,525	\$2,600	\$2,700
Over 50	\$3,000	\$3,150	\$3,200	\$3,300	\$3,500

Average Weekly Wage: This bill increases the maximum average weekly wage used in the determination of compensation for temporary total disability, temporary partial disability, and total permanent disability from \$882 to \$900 for FY 2007, \$930 for FY 2008, \$954 for FY 2009, and \$975 for FY 2010 and beyond. Medical benefits are determined by the degree of impairment and are not based on the wage. The bill also increases the maximum compensation (exclusive of medical benefits) that may be paid for an injury under the worker's compensation and occupational disease law.

Maximum Compensation: The bill increases the maximum compensation, excluding medical benefits, that may be paid for an injury from \$294,000 to \$300,000 for FY 2007, to \$310,000 for FY 2008, \$318,000 for FY 2009, and \$325,000 for FY 2010 and beyond.

It is difficult to determine the potential cost of these changes. An actuarial analysis of these changes will be performed by the National Council on Compensation Insurance (NCCI). [Note: The results of the actuarial analysis are not currently available. The note will be updated when NCCI finishes their analysis.]

According to the Indiana Compensation Rating Bureau, premiums increased by 2.2% for 2006, 3.2% for 2005, and decreased by 1.8% for 2004. Premiums for worker's compensation for 2005, statewide, were about \$759 M.

The impact on the state would be as a self-insured employer. The impact is probably minor. For FY 2005, the state paid about \$2.7 M in worker's compensation benefits, \$2.5 M in FY 2004, and \$2.4 M in FY 2003.

Worker's Compensation Board : The provision that a member of the Worker's Compensation Board may not have other employment inconsistent with the discharge of the member's duties should have no fiscal impact.

The bill removes the exception that applications for increased permanent partial impairment be done within one year of the last day the compensation was paid. The length of time for the filing of the application would be two years like other modifications made by the Board. The change could increase the amount of awards by an unknown amount, but the increase is probably minor.

Time Limitation on Claims: The provisions of the bill require the employer to notify an employee of the time limitation for filing for worker's compensation for personal injury by accident could have minor fiscal impact. The Board is required to approve a form requiring the employee's signature.

(Revised) *Second Injury Fund*: The bill changes the date for the sending of the notice of a Second Injury Fund assessment from not later than October 1 to not later than November 1. The bill provides for a 10% penalty of the amount owed if the assessment is not paid within 30 days. It also changes the fund balance where an assessment cannot be made by the Board. Currently if the fund balance in the Second Injury Fund is greater than \$1 M, then no assessment is made. The bill changes the amount to 135% of the prior year's disbursements from the fund.

The bill also revises the computation for the assessment for the Second Injury Fund. The Board would determine the amount of the needed assessment and then allocate the assessment between the insured and self-insured employers based on the percentage of total paid losses of each group to the total paid losses. The assessment paid by insured employers would be paid based on premiums paid and by self-insured employers based on total claims paid. The state is self-insured. It is unknown if the change would increase the state assessment. The change would probably be minor.

The bill also transfers the June 30, 2007, fund balance of the Residual Asbestos Fund to the Second Injury Fund. As of January 6, 2006, the Residual Asbestos Injury Fund had a fund balance of approximately \$730,566. On June 30, 2006, the fund balance in the Second Injury Fund was \$832,782, and payouts for FY 2005 were about \$3.4 M. The Residual Asbestos Injury Fund is for the purpose of providing compensation to employees who become totally and permanently disabled from an exposure to asbestos while in employment within Indiana and is also administered by the Worker's Compensation Board.

Interim Study Committee: This bill establishes the Interim Study Committee on Worker's Compensation Reimbursement Issues. The Committee would study the reimbursement rates paid by worker's compensation insurers to hospitals and other health care providers, including individual and group health insurers, government

programs (including Medicare and Medicaid), and private payers. The Committee is to operate under the policies governing study committees adopted by the Legislative Council. Legislative Council resolutions in the past have established budgets for interim study committees in the amount of \$9,500 per interim for committees with fewer than 16 members.

Explanation of State Revenues:

Explanation of Local Expenditures: Local governments and school corporations could incur an indeterminable increase in expenses as a result of these proposals (see *Explanation of State Expenditures*). Like the state, most of these units are self-insured and would directly bear any additional costs. For any entities purchasing private worker's compensation insurance, the cost of insurance premiums would likely increase as a result of this proposal.

Explanation of Local Revenues:

State Agencies Affected: Worker's Compensation Board; State Agencies.

Local Agencies Affected: All.

Information Sources:

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